

REMARKS

Claim Rejections – 35 USC § 102

Claims 26, 27, and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,324,781 to Stevens.

The Examiner states that Stevens teaches a dye and that the dye indicates to a user environmental conditions of the soil where the mulch is placed. Stevens specifically states that a coloring may be added to enhance the appearance of the mat in use. For example, the color may be green to match a lawn or grass area. This does not indicate to a user environmental conditions where the mulch is placed.

Further, the Examiner states that the mulch of Stevens includes both a dye and a fertilizer. Therefore, when the user sees the mulch color the user will know that mulch has been applied to that portion of soil along with a fertilizer i.e. that soil portion has been fertilized which is an environmental condition. The statement made by the Examiner teaches against the claims of the invention. The claim states that the dye indicates to the user the environmental conditions of the soil. The fertilizer is part of the mulch, and is already in the mulch prior to the application to the soil. The present invention teaches that the mulch indicates the condition of the soil so that other things can be added to the soil to improve its environmental condition. Here, the fertilizer is being added to the soil, not knowing if the fertilizer is needed in the soil. This goes against the

teaching of the claims of the present application. Therefore claims 26, 27, and 38 are not anticipated or obvious over the prior art.

Claim Rejections – 35 USC § 103

Claims 26, 27, 28, 29, 30, 38, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 6,019,062 to Lombard et al.

As stated above, Stevens does not teach a dye which indicates environmental conditions of the soil. The Examiner states that Stevens is silent on the dye **indicates** to a user environmental conditions of the soil where said mulch is placed; the dye **indicates** to a user the acidity of said soil; the dye **indicates** to a user the moisture content of said soil; or the dye **indicates** to a user the chemical content of said soil and it is an environmentally safe dye (Lombard abstract second to last line).

Lombard et al teaches a dye indicator i.e. a pH indicating dye for application to cellulosic material such as paper (Lombard Col. 2 line 1-5 and Col. 2 line 11-15; Col. 2 line 60-67). It would have been obvious to modify the teachings of Stevens with the teachings of Lombard since the modification is merely an engineering design choice involving the selection of a known alternate dye selected for the known advantage of monitoring pH levels as taught by Lombard and is an environmentally safe dye as taught by Lombard (Lombard abstract).

Lombard teaches a specific use, a pH indicating solution used for animal litter for visually indicating where urine is present. Lombard specifically teaches the use of this is for indoors in a litter box. There must be a teaching to combine the references. Stevens specifically teaches that a dye can be used for aesthetics. Lombard teaches that a dye is used for determining if urine is present. There is definitely no teaching to combine the references, and in fact since Lombard specifically teaches the use of this indoors only in a household, this teaches away from using this on soil. Therefore, the above claims are not obvious over the prior art.

Regarding Claim 27, Stevens as modified teaches the mulch comprising; nitrogen, phosphorous, and potassium fortifiers (Stevens abstract last line).

For the reasons stated above, claim 27 is not obvious over the prior art.

Regarding 38, Stevens as modified teaches the mulch is the same or similar color of an actual plant, flower, fruit, or vegetable of a seed planted with the mulch (Stevens Col. 6, lines 37).

For the reasons stated above, claim 38 is not obvious over the prior art.

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 6,019,062 to Lombard et al as applied to claim 26 above, and further in view Japanese Patent JP 01262735 A to Yamnar Agricult Equip Co LTD.

Regarding Claim 52, Stevens as modified teaches a method of placing colored mulch on top of soil; changing the colors of the mulch based on the

condition of the soil. Stevens is silent on adding chemicals to the soil based on the color of the mulch. However, it is old and notoriously well-known in the art of plant husbandry to observe and test soil conditions to see if they meet the desired parameters and to adjust the parameters when necessary. Yanmar teaches the general knowledge of one of ordinary skill in the art to add fertilizer when the pH is out of desired range (Yanmar abstract and Fig. 1#2). General knowledge that the pH of a growing medium component determines the addition of fertilizer. It would have been obvious to further modify the teachings of Stevens with the teachings of Yanmar for the advantage of promoting healthy plant development. Examiner takes official notice that it is old and notoriously well-known to add fertilizer based on a pH of the soil e.g. tomato plants prefer a certain acidity in the soil for healthy development so it is general practice to test the pH to determine if and how much fertilizer is needed.

In order for a rejection based on a combination of references to be maintained there must be a teaching to combine the references. Here the references specifically teach against the teaching. Stevens teaches a dye for aesthetic purposes. Lombard teaches a dye for detecting urine in animal litter. The Examiner states that Yanmar teaches adding a fertilizer when the pH is out of range. Since Stevens teaches as stated by the Examiner that the mulch can have a fertilizer added to it whether or not it is needed teaches against the teachings of Yanmar. Further, Lombard teaches to throw out the litter once

urine is detected. There would be no teaching to add chemicals to the litter of Lombard. Therefore the above claims are not obvious over the prior art.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 6,019,062 to Lombard et al. as applied to claim 26 above, and further in view of U.S. Patent No. 5,734,167 to Skelly.

Regarding Claim 32, Steven teaches coloring the mulch, but is silent on the dye is florescent. However, Skelly teaches it is old and notoriously well-known to dye agricultural products with florescent dye allowing the mulch to glow in the dark (Skelly Col. 1 line 35-45). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Stevens with the teachings of Skelly at the time of the invention since the modification is merely the selection of a known alternate coloring for the advantage of enabling safe night time agricultural operations as taught by Skelly (Skelly Col. 1 line 1-26).

For the reasons stated above for claim 26, claim 32 is not obvious over the prior art. Further there is no reasons to combine the references. Stevens teaches to add a dye for aesthetic purposes. A fluorescent dye is not for aesthetic purposes. Therefore, there is no reason to combine the references.

Claim 32 is rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 5,734,167 to Skelly.

Regarding Claim 32, Stevens teaches coloring the mulch, but is silent on the dye is florescent. However, Skelly teaches it is old and notoriously well-

known to dye agricultural products with florescent dye allowing the mulch to glow in the dark (Skelly Col. 1, lines 35-45). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Stevens with the teachings of Skelly at the time of the invention since the modification is merely the selection of a known alternate coloring for the advantage of enabling safe night time agricultural operations as taught by Skelly (Skelly Col. 1, lines 1-26).

For the reasons stated above, claim 32 is not obvious over the prior art.

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,067,140 to Thomas in view of U.S. Patent No. 6,019,062 to Lombard et al.

Regarding Claim 47, Thomas teaches a colored mulch product (Thomas abstract) comprising; a material comprising a fiber cellulose (Thomas abstract first line), clay, loam, sand, and/or a combination of same; a binding agent (Thomas Col. 1 line 30 "wetting agent" and Col. 4 line 35-41); and a dye and/or pigment (Thomas Col. 1 line 35) produced by a lifting and tumbling agglomeration operation (Thomas Col. 2 line 65-66). Thomas teaches adding fertilizer to the mulch mixture (Thomas Col. 1 line 15). Thomas is silent on the dye indicates to a user the environmental conditions of the soil where the mulch is place. However, Lombard et al teaches a dye indicator i.e. a pH indicating dye for application to cellulosic material such as paper (Lombard Col. 2 line 1-5 and Col. 2 line 11-15; Col. 2 line 60-67). It would have been obvious to modify the teachings of Stevens with the teachings of Lombard since the modification is

merely an engineering design choice involving the selection of a known alternate dye selected for the known advantage of monitoring pH levels as taught by Lombard.

Thomas teaches adding the dye for aesthetic purposes. Lombard teaches adding a dye to show when urine is added to animal litter. There is no teaching to combine the references. Therefore claim 47 is not obvious over the prior art.

Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 5,697,984 to Swatzina et al.

Regarding Claim 50, Stevens teaches a colored mulch product wherein the color, but is silent on the mulch product fades or disappears in response to a lack of fertilizer in the mulch. Stevens teaches the mulch product is made up of fertilizer (Stevens abstract last sentence), mulch plus fertilizer makes a mulch product. Swatzina teaches it is old and notoriously well-known to color fertilizer (e.g. red fertilizer Swatzina; Col. 2 line 31-33 and Example 4). One of ordinary skill would be motivated to modify the teachings of Stevens with the teachings of Swatzina for a desired aesthetic design. Stevens as modified by Swatzina, i.e. the selection of red fertilizer, would inherently teach that as the red disappears or fades from the mulch the fertilizer is disappearing too.

Stevens teaches to add a dye to a mulch to make it more appealing. Therefore, The dye would not be appealing if it were to fade in color. The claim states that the color of the mulch fades in response to a lack of fertilizer. This is

not taught by the above combination of references. Therefore, claim 50 is not obvious over the prior art.

Applicant believes that the application is in condition for allowance.

Respectfully submitted,



Philip M. Weiss, Esq.
Attorney for Applicant
Weiss & Weiss
300 Old Country Road, Suite 251
Mineola, New York 11501
(516) 739-1500

PMW:db

Express Mail mailing label No.: EM 220085031 US

Date of Deposit: June 17, 2008

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313:

June 17, 2008

Date


Debbie Broderick